

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL ACTION NO. 1:20-CV-00235-DSC**

MARIA NORMAN,

Plaintiff,

v.

**KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,¹**

Defendant.

**MEMORANDUM AND ORDER
OF REMAND**

THIS MATTER is before the Court on Plaintiff's "Motion for Summary Judgment" (document #13) and Defendant's "Motion for Summary Judgment" (document #17), as well as the parties' briefs and exhibits.

The parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and these Motions are ripe for disposition.

Having fully considered the written arguments, administrative record, and applicable authority, the Court finds that Defendant's decision to deny Plaintiff Social Security benefits is not supported by substantial evidence. Accordingly, the Court will grant Plaintiff's Motion for Summary Judgment; deny Defendant's Motion for Summary Judgment; reverse the Commissioner's decision; and remand this matter for further proceedings consistent with this

¹Kilolo Kijakazi is Acting Commissioner of Social Security and substituted as Defendant herein with no further action required pursuant to Fed.R.Civ.P 25(d) and Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

Memorandum and Order.

I. PROCEDURAL HISTORY

The Court adopts the procedural history as stated in the parties' briefs.

Plaintiff filed the present action on August 25, 2020. She assigns error to the Administrative Law Judge's failure to consider Listing 1.04A (cervical spine disorders) contrary to Radford v. Colvin, 734 F.3d 288, 296 (4th Cir. 2013). "Plaintiff's Brief in Support ... "at 1, 4-9 (document #14); "Plaintiff's Response ..." at 1-4 (document #19).

II. STANDARD OF REVIEW

The Social Security Act, 42 U.S.C. § 405(g) and § 1383(c)(3), limits this Court's review of a final decision of the Commissioner to: (1) whether substantial evidence supports the Commissioner's decision, Richardson v. Perales, 402 U.S. 389, 390, 401 (1971); and (2) whether the Commissioner applied the correct legal standards. Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990); see also Hunter v. Sullivan, 993 F.2d 31, 34 (4th Cir. 1992) (per curiam). The District Court does not review a final decision of the Commissioner de novo. Smith v. Schweiker, 795 F.2d 343, 345 (4th Cir. 1986); King v. Califano, 599 F.2d 597, 599 (4th Cir. 1979); Blalock v. Richardson, 483 F.2d 773, 775 (4th Cir. 1972).

As the Social Security Act provides, "[t]he findings of the [Commissioner] as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). In Smith v. Heckler, 782 F.2d 1176, 1179 (4th Cir. 1986), quoting Richardson v. Perales, 402 U.S. 389, 401 (1971), the Fourth Circuit defined "substantial evidence" thus:

Substantial evidence has been defined as being "more than a scintilla and do[ing] more than creat[ing] a suspicion of the existence of a fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to

support a conclusion.”

See also Seacrist v. Weinberger, 538 F.2d 1054, 1056-57 (4th Cir. 1976) (“We note that it is the responsibility of the [Commissioner] and not the courts to reconcile inconsistencies in the medical evidence”).

The Fourth Circuit has long emphasized that it is not for a reviewing court to weigh the evidence again, nor to substitute its judgment for that of the Commissioner, assuming the Commissioner’s final decision is supported by substantial evidence. Hays v. Sullivan, 907 F.2d at 1456 (4th Cir. 1990); see also Smith v. Schweiker, 795 F.2d at 345; and Blalock v. Richardson, 483 F.2d at 775. Indeed, this is true even if the reviewing court disagrees with the outcome – so long as there is “substantial evidence” in the record to support the final decision below. Lester v. Schweiker, 683 F.2d 838, 841 (4th Cir. 1982).

III. DISCUSSION OF CLAIM

The question before the ALJ was whether Plaintiff became disabled at any time.² Plaintiff argues that the ALJ erred by failing to explain his finding that she did not meet Listing 1.04A, other than the conclusory statement that she did not meet that or any other Listing. (Tr 207). Where a listed impairment is implicated in the medical records,

[t]he ALJ . . . identif[ies] the relevant listed impairments. He should then . . . compar[e] each of the listed criteria to the evidence of [Plaintiff’s] symptoms. Without such an explanation, it is simply impossible to tell whether there was substantial evidence to support the determination.

²Under the Social Security Act, 42 U.S.C. § 301, et seq., the term “disability” is defined as an:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months...
Pass v. Chater, 65 F. 3d 1200, 1203 (4th Cir. 1995).

Cook v. Heckler, 783 F.2d 1168, 1173 (4th Cir. 1986). In Radford, the Fourth Circuit held that such analysis is “[a] necessary predicate to engaging in substantial evidence review.” 734 F.3d at 295 (remanding where ALJ summarily concluded that Listing 1.04A was not met and gave no further analysis other than noting state agency experts concluded no Listing was met). Defendant invites the Court to speculate as to what the ALJ’s analysis would have been had he explained it. As the Fourth Circuit further instructed in Radford, it is “not our province –nor the province of the district court – to engage in these [fact-finding] exercises in the first instance.” 734 F.3d at 296. See also Monroe v. Colvin, 826 F.3d 176, 179 (4th Cir. 2016) (“an ALJ must build an accurate and logical bridge from the evidence to his conclusions.”) (internal quotations omitted).

The Court concludes that this matter must be remanded for a new hearing. By ordering remand pursuant to sentence four of 42 U.S.C. § 405(g), the Court does not forecast a decision on the merits of Plaintiff’s application for disability benefits. See Patterson v. Comm’r of Soc. Sec. Admin., 846 F.3d 656, 663 (4th Cir. 2017). “Under § 405(g), ‘each final decision of the Secretary [is] reviewable by a separate piece of litigation,’ and a sentence-four remand order ‘terminate[s] the civil action’ seeking judicial review of the Secretary’s final decision.” Shalala v. Schaefer, 509 U.S. 292, 299, 113 S. Ct. 2625, 2630-31, 125 L.Ed. 2d 239 (1993) (quoting Sullivan v. Hudson, 490 U.S. 877, 892, 109 S.Ct. 2248, 2258, 104 L.Ed.2d 941 (1989)).

IV. ORDER

NOW THEREFORE IT IS ORDERED:

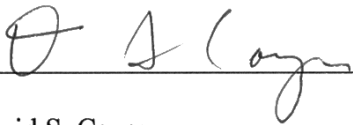
1. Plaintiff’s “Motion for Summary Judgment” (document #13) is **GRANTED**; Defendant’s “Motion for Summary Judgment” (document #17) is **DENIED**; and the Commissioner’s decision is **REVERSED**. This matter is **REMANDED** for a new hearing

pursuant to Sentence Four of 42 U.S.C. § 405(g).³

2. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties.

SO ORDERED.

Signed: August 16, 2021

A handwritten signature in cursive script, appearing to read "D S Cayer", is written over a horizontal line.

David S. Cayer
United States Magistrate Judge



³Sentence Four authorizes “a judgment affirming, modifying, or reversing the decision ... with or without remanding the cause for a rehearing.” Sullivan v. Finkelstein, 496 U.S. 617, 625 (1990).